



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving the Northern California Power Agency Market Purchase Program Agreement, Authorizing Execution by the City Manager with Administration by the Electric Utility Director, and Appointing the City Manager and Electric Utility Director as the Designated Representatives for Lodi

MEETING DATE: August 3, 2011

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution approving the Northern California Power Agency Market Purchase Program Agreement, authorizing execution by the City Manager with administration by the Electric Utility Director, and appointing the City Manager and Electric Utility Director as the Designated Representatives for Lodi.

BACKGROUND INFORMATION: The Northern California Power Agency (NCPA) Commission approved a Market Purchase Program (MPP) Agreement at its July 2007 meeting. The MPP has provided participating NCPA members with services to secure short-term (less than five years) power purchase contracts from the market using NCPA staff and their power purchase agreements. At the inception of the MPP, Lodi made the decision not to participate in the MPP due to its high cost and security deposit requirements.

Over the years Lodi has contracted with NCPA for subsets of the MPP services, such as the \$40,832 letter of agreement approved by Resolution No. 2008-113 in June 2008. This letter of agreement excluded risk management services, including counterparty credit evaluation and monitoring, and required Lodi to negotiate, execute and maintain its own power purchase agreements.

Since the implementation of the MPP, much start-up work has been completed and the current budget for the MPP has dropped from \$203,400 for Fiscal Year 2007/08 to \$58,275 for Fiscal Year 2011/12. Since 2007, the requirement to maintain Lodi's existing power supply contracts, to assess counterparty risk and complete credit analysis has become increasingly burdensome as the electric utility industry has continued to become more complex.

In April 2011, the Lodi City Council adopted Resolution No. 2011-63 authorizing Lodi to participate in the NCPA Gas Purchase Program. Lodi will benefit by having the full range of NCPA services to provide coordination for both gas and power purchases.

Purchases under the MPP will be made using industry standard contracts including the Western Systems Power Pool Agreement (WSPP Agreement) or the Edison Electric Institute Master Power Purchase and Sale Agreement (EEI Master Agreement), with such modifications as have previously been approved by the NCPA Commission. Purchases are restricted to a maximum time period of five years.

APPROVED: 
Konradt Bartlam, City Manager

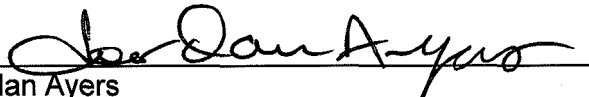
The MPP requires the appointment of "Designated Representatives" who are authorized to execute purchase confirmations and to approve modifications to the standard as necessary with the City Attorney's attestation for each transaction. It is recommended that both the City Manager and the Electric Utility Director be appointed as Lodi's Designated Representatives.

The MPP requires each participant to pay a fixed \$900/month plus a variable charge to cover the remaining portion of the MPP budget based on the purchases made through the MPP. Due to the large drop in the MPP budget it is expected that the majority of the costs will be covered by the \$900 per month charge to each participant and that there will be little or no variable charge. The MPP allows all NCPA Members to sign up for the MPP without any actions being taken by either the other MPP participants or the NCPA Commission. The MPP does grant the right to the existing MPP participants to require new MPP participants to pay a contribution to the development costs of the MPP previously paid by the existing MPP participants. The existing MPP participants have determined that this one time charge for Lodi to join the MPP is \$10,000.

This recommendation has been reviewed and agreed to by the Risk Oversight Committee.

FISCAL IMPACT: Monthly fixed cost of \$900/month plus a variable charge estimated to be less than \$0.3/MWh for energy purchased through MPP. In addition, there will be a one-time charge of \$10,000.

FUNDING AVAILABLE: Included in the FY 2011/12 Budget Account No. 160642.8201.


Jordan Ayers
Deputy City Manager/Internal Services Director


Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Matt Foskett, Rates & Resources Manager

EAK/MF/lst

NCPA MARKET PURCHASE PROGRAM AGREEMENT

This NCPA MARKET PURCHASE PROGRAM AGREEMENT ("the Agreement") is made effective as of August 1, 2007 ("the Effective Date"), by and among the Northern California Power Agency, a joint powers agency of the State of California ("NCPA") and those of its Members who execute this Agreement ("Participants"). NCPA and the Participants are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

- A. NCPA and the Participants are interested in purchasing additional electric capacity and energy for the benefit of the Participants' customers.
- B. The Participants, through these purchases, seek to reduce the proportion of their customers' electric supply needs that would otherwise have to be obtained in a potentially volatile spot market, thereby assuring greater rate and budget stability.

C. The Participants desire that NCPA negotiate and enter into term agreements to purchase electric energy and capacity from creditworthy market suppliers that simultaneously allow Participants to diversify their counterparty risk by subscribing to a more diverse portfolio of power purchase contracts than if each individually selected a single energy supplier.

D. The Participants further desire to enable and obligate NCPA to conduct the foregoing activities, and deliver electricity from these market purchases to the Participants, and to enable and obligate the Participants to take delivery of and pay for such electricity and to pay NCPA for the costs of undertaking the foregoing activities.

NOW THEREFORE, in consideration of the foregoing, and the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree and intend to be legally bound as follows:

Section 1. Definitions

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings:

1.1.1 "Adjusting Participant" has the meaning set forth in Section 7.3.I

1.1.2 "Agreement" means this NCPA Market Purchase Program Agreement, including all Exhibits attached hereto, as the same may be amended from time to time in accordance with the terms and conditions hereof.

1.1.3 "Allocating Participant" has the meaning set forth in Section 7.2.

1.1.4 "Annual Budget" means the budget for the *ensuing* Budget Year adopted by the Commission, as it may be amended from time to time.

1.1.5 "Associate Member" means an associate member of NCPA ~~admitted~~ to NCPA in accordance with ~~Article~~ IV, Section 7 of the Joint Powers Agreement.

1.1.6 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time.

1.1.7 "Budget Year" means the NCPA fiscal year; currently the twelve month period beginning July 1 and ending on the next following June 30.

1.1.8 "Claims" has the meaning set forth in Section 10.2.

1.1.9 "Commission" means the NCPA Commission.

1.1.10 "Commodity Costs" means the cost billed to NCPA by a Third Party seller for electric energy and/or capacity obtained through a Power Purchase Agreement that qualifies as an Eligible Contract Purchase under this Agreement.

1.1.11 "Constitutive Documents" means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its City Charter, and any codes, ordinances, bylaws, and resolutions adopted by such Participant's governing body.

1.1.12 "Contract Price" means, with respect to any Eligible Contract Purchase under this Agreement, the price per megawatt-hour and/or price per megawatt listed in the applicable Transaction Confirmation.

1.1.13 "Defaulting Party" has the meaning set forth in Section 9.1

1.1.14 "Designated Representatives" means with respect to NCPA, its General Counsel and General Manager; and with respect to each Participant, Its Counsel and Utility Director (or other employee designated by resolution of the Participant's governing body).

1.1.15 "Effective Date" has the meaning set forth in the preamble hereto.

1.1.16 "Electric System" means, with respect to each Participant except the San Francisco Bay Area Rapid Transit District ("**BART**"), all properties and assets, real and personal, tangible and intangible, of the Participant now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution or sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided,

however, that to the extent the Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only the Participant's ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System.

1.1.17 "**Eligible Contract Purchase**" means a market purchase of electric energy or capacity from a Third Party that satisfies the Procurement Conditions and has been approved by each Party as an Eligible Contract Purchase in accordance with Section 3 of this Agreement.

1.1.18 "**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the market purchase. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these

avoided emissions such as Green Tag Reporting Rights. Environmental Attributes do not include: (1) any energy, capacity, reliability or other power attributes; (2) production ~~tax~~ credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation; (3) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (4) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits.

1.1.19 "Event of Default" has the meaning set forth in Section 5.5.3 and Section 9.1.

1.1.20 "Joint Powers Agreement" means that certain Northern California Power Agency Joint Power Agreement first made July 19, 1968 and revised as of April 1, 1973, establishing NCPA, as the same may be amended from time to time.

1.1.21 "Maximum Contract Price" means the applicable
 1 a m ~~ceiling price for~~ capacity and/or energy at the time an Eligible Contract

Purchase is consummated; currently, the CAISO Bid Cap for its real-time imbalance energy market as approved by the Federal Energy Regulatory Commission.

1.1.22 "Member" means any Member of NCPA or AssociateMember of NCPA.

1.1.23 "MW means megawatt.

1.1.24 "MWh" means megawatt hour.

1.1.25 "MPP" means the NCPA Market Purchase Program, consisting of all Eligible Contract Purchases hereunder and all Participants hereto as program Participants.

1.1.26 "MPP Costs" are all those fixed and variable costs (each including administrative and general overhead costs), other than Transaction Specific Costs and Commodity Costs associated with the MPP Program. "Fixed MPP Costs" are those costs deemed to be incurred by NCPA regardless of whether NCPA transacts with Third Parties under this Agreement, including start-up costs and attorney fees. "Variable MPP Costs" are those costs that are common to all Participants under this Agreement but are expected to

vary with the size and scope of the purchase program established under this Agreement, including NCPA ~~staff~~ time.

1.1.27 "MPP Cost Allocation" means the MPP Costs allocated to the Participants in the Annual Budget.

1.1.28 "NCPA" has the meaning set forth in the preamble hereto.

1.1.29 "Net Short Position" means the amount of energy in megawatt hours by which a Participant's forecasted monthly load exceeds its resources as detailed in NCPA's Monthly Load-Resource Balance Summary and the ten-year Load Resource Balance provided as part of the Annual Budget. For months in which a Participant's resources exceed its forecasted load its Net Short Position shall be deemed to be zero. A Participant's annual Net Short Position for each Budget *Year* will be computed ~~as~~ the sum of each month's Net Short Position.

1.1.30 "Participant" has the meaning set forth in the preamble hereto.

1.1.31 "Participant Purchase Confirmation" means a Participant's written and properly executed confirmation of a transaction to acquire an Eligible ContractPurchase, in the form of Exhibit A.

1.1.32 "Party" ~~a~~ "Parties" ~~has~~ the meaning set forth in the preamble hereto; provided that "Third Parties" are ~~entities that are not party~~ to this Agreement.

1.1.33 "PPA ~~or~~ Power Purchase Agreement means an agreement ~~f~~a the purchase and delivery of electric energy ~~or capacity~~ entered into ~~by~~ NCPA with Third Parties. The PPA shall in the ~~form~~ of the WSPP Agreement ~~or~~ the EEI Master Power Purchase & Sale Agreement, with such modifications ~~as~~ have been approved ~~by~~ the Commission, provided that, in any particular instance, such agreements ~~may~~ be modified in the discretion of the NCPA General Manager and NCPA General Counsel, after consultation with the Project Participants, where such modifications are reasonably required in ~~order~~ to consummate the PPA.

1.1.34 "Procure" and *other* ~~forms~~ of such verb, including Procurement, Procuring, and Procured, means acquiring electricity through Eligible ContractPurchases with third parties.

1.1.35 ~~"Procurement~~ "Conditions" has the meaning set forth in Section 3.1.

1.1.36 "Resource Adequacy Capacity" is that capacity in megawatts that has been approved by each Participant, acting as a Local Regulatory Authority, as capacity available to ensure that adequate resources are available to meet peak demand and operating and planning reserves for the purposes of local area and system reliability.

1.1.37 "Revenues" means, with respect to each Participant with the exception of BART, all income, rents, rates, fees, charges, and other moneys derived by the Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System and (c) the proceeds derived by the Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System, but the

term Revenues shall not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Participant or (ii) contributions from customers for the payment of costs of construction of facilities to serve them. In regards to BART, Revenues means, all income, rents, rates, fees, charges, grants, fares or tariffs, subventions and other moneys derived by the Participant from its operation including, without limiting the generality of the foregoing, (i) the earnings on and income derived from the investment of such income, rents, rates, fees, charges grants, fares or tariffs, subventions or other moneys and (ii) the proceeds derived by the Participant directly or indirectly from the sale, lease or other disposition of all or a part of its assets, but the term Revenues shall not include any moneys derived from sources the use of which is limited by law to expenditures other than operating expenses.

1.1.38 "Scheduling Protocols" means the applicable provisions of the Scheduling Coordinator Program Agreement and any other contractual or other arrangements between NCPA and the relevant Participant concerning the scheduling, delivery and metering of the Eligible Contract Purchase as approved by the Parties.

1.1.39 "Security Account" means the account established by NCPA and funded by the Participants in accordance with Section 5.3, the

funds of which are available for use by NCPA in accordance with the terms and conditions hereof.

1.1.40 "Subscription Percentage" means that proportion of an Eligible Contract Purchase that a Participant subscribes to in writing in accordance with the terms of this Agreement.

1.1.41 "Term" has the meaning set forth in Section 8.

1.1.42 "Transaction Confirmation" has the meaning given to it in the PPA used to procure energy and/or capacity for an Eligible Contract Purchase.

1.1.43 ~~"Transaction-Specific~~ Costs" means any and all costs, except for Commodity Costs, arising after execution of an Eligible Contract Purchase and directly or indirectly incurred by NCPA as a result of entering into a specific transaction to acquire an Eligible Contract Purchase. Transaction-Specific Costs include, but are not limited to termination payments, or counterparty requests for assurances, related legal fees and associated staff time.

1.1.44 "Withdrawing Participant" has the meaning set forth in Section 7.3.1.

1.2 Rules of Interpretation. ~~As~~ used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: the terms "herein," "hereto," "herewith and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "~~Section,~~" "~~subsection,~~" "~~clause,~~" or "~~Exhibit~~" shall mean a ~~Section, subsection, clause or Exhibit of this Agreement~~ as the case may be. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any amendment or modification thereof. A reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other ~~entity,~~ in each case whether or not having a separate legal personality and includes its successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

Section 2. Effectiveness of Agreement Prior to December 31, 2007, this Agreement shall be effective ~~as~~ to each Participant ~~as~~ of the Effective Date upon

execution by the Participant, whereupon the procurement period shall commence and survive through the term of this Agreement. After December 31, 2007 this Agreement shall be effective as to each Participant in accordance with Section 7.2 below.

Section 3. Procurement Process

3.1 Request for Proposals and PPA(s). All Procurement activities undertaken pursuant to this Agreement shall be through the use of a Request for Proposals substantially in the form of Exhibit B attached hereto. NCPA represents that the following conditions will be observed when undertaking its Procurement activities. ("**Procurement** Conditions"):

(i) Each market purchase shall be an Eligible Contract Purchase, consummated in accordance with the NCPA Energy Risk Management Policy;

(ii) Participants may only subscribe to Eligible Contract Purchases in the amount of their forecast Net Short Position, or to the extent that a subscription provides Participant with Resource Adequacy Capacity;

(iii) The period of time for which NCPA is obligated to accept and pay for electricity under an Eligible Contract Purchase shall be less than five (5) years;

(iv) The Contract Price for purchasing energy in a Eligible Contract Purchase shall not exceed the Maximum Contract Price;

(v) The PPA(s) utilized to procure Eligible Contract Purchases may, in any given instance, be modified in the discretion of the NCPA General Manager and NCPA General Counsel, after consultation with the Project Participants, to include additional terms and conditions approved by the Parties' Designated Representatives or to delete previously approved Commission modifications to the form of the PPAs, where such modifications are reasonably required in order to consummate the PPA;

(vi) Any Environmental Attributes or Resource Adequacy Capacity associated with an Eligible Contract Purchase will be procured by NCPA for the proportionate benefit of the Participants.

3.2 Participant Approval of Procurement Process and an Eligible Contract Purchase. By executing this Agreement, each Participant acknowledges and agrees to be bound by the procurement process contained in or referenced by a Request for Proposals issued pursuant hereto. By and through their Designated Representatives' execution of a Participant Purchase Confirmation substantially in the form of Exhibit A hereto, each Participant acknowledges and approves of the terms of the corresponding PPA for subscription to an Eligible

Contract Purchase, and agrees to pay for its share of the power or capacity purchased thereby.

3.3 NCPA Approval of Procurement Process and an Eligible Contract Purchase. By executing this Agreement, NCPA acknowledges and agrees to be bound by the procurement process contained in or referenced by the Request for Proposals, and by the execution of a Participant Purchase Confirmation hereunder, substantially in the form of Exhibit A hereto, NCPA approves of the terms of the PPA for the Procurement of an Eligible Contract Purchase.

3.4 Delivery of Electricity / Allocation of Resource Adequacy Capacity and Environmental Attributes. Any electricity delivered to NCPA from an Eligible Contract Purchase shall be delivered to each Participant in proportion to such Participant's Subscription Percentage and each Participant shall accept and pay for its relevant percentage of such electricity. To the extent Participant is unable to accept such deliveries in full, NCPA shall dispose of such surplus in its discretion, in such a manner to maximize Participant value. Notwithstanding the above, NCPA may allocate and pool capacity and energy procured through any particular Eligible Contract Purchase among the Participants in such percentages as NCPA may, in its reasonable discretion, determine are necessary, desirable, or

appropriate. Such electricity shall be scheduled for the Participants in accordance with the Scheduling Protocols. Resource Adequacy Capacity and Environmental Attributes obtained by NCPA as a result of performance under this Agreement shall likewise be allocated to the Participants by their Subscription Percentage.

3.5 Payments to Counterparties. NCPA shall pay all costs incurred hereunder using operating or Security Account funds, paid to NCPA in accordance with Section 5, or such other sources as may be agreed upon in writing by the Parties from time to time.

3.6 Removal of Eligible Contract Purchases from MPP. Any Eligible Contract Purchase that delivers electricity to NCPA under a PPA shall be automatically removed from the MPP on the date its Transaction Confirmation terminates or expires. Any other Eligible Contract Purchase shall continue to be included **in** the MPP until such time as NCPA approves removing it from the MPP and approves the subsequent use of such Eligible Contract Purchase, including whether such Eligible Contract Purchase should be sold or otherwise disposed of by any means including assignment, book-out or offsetting transaction, or termination. Any proceeds or costs associated with removing an Eligible Contract Purchase from the MPP shall be allocated among the

Participants in accordance with the Subscription Percentages unless otherwise agreed upon in writing by the Participants.

Section 4. Cooperation and Further Assurances Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption ~~of~~ obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. Further, the Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to procure electricity from an Eligible Contract Purchase, including with respect to negotiating and executing any agreements to implement any credit support arrangements.

Section 5. Payment Obligations, Security Account, Invoicing

5.1 Participant Payment Obligations. Each Participant agrees pay to NCPA each month the sum of (a), (b), and (c) as follows: (a) Fixed **MPP** Costs ~~of~~ \$900 for each month Participant is a party to this Agreement, and one-twelfth of the Variable MPP Costs as determined below in Section 5.2, plus (b) Transaction Specific Costs for each Eligible Contract Purchase Participant

subscribes to, plus (c) Commodity Costs. In addition, each Participant shall maintain working capital in accordance with NCPAs Annual Budget, and maintain its Security Account as provided in this Agreement.

5.2 Calculation of and True-Up for Variable MPP Costs.

Participants payment obligations for Variable MPP Costs under section 5.1 shall be calculated as follows. For each Budget Year NCPA shall estimate the total Variable MPP Costs to be incurred under this Agreement and this total will be divided by the Participants' total Net Short Position to determine the estimated Variable MPP Unit Cost on a per megawatt-hour basis. The Variable MPP Unit Cost will then be multiplied by the total monthly energy subscribed to by each Participant to determine the amount owed by each Participant for Variable MPP Costs under section 5.1(a) above. Upon the conclusion of a Budget Year NCPA shall compare each Participant's payment of estimated Variable MPP Costs with the actual Variable MPP Costs incurred on behalf of Participant such that overpayments will be credited to, and underpayments will be debited to Participants account in accordance with NCPA's Annual Budget settlements.

5.3 Security Account.

5.3.1 Initial Amounts. Prior to subscribing to an Eligible Contract Purchase a Participant shall insure that sufficient funds are on deposit

in the Security Account equal to the highest (3) months of the immediately following (12) months of estimated Commodity Costs for all Eligible Contract Purchases Participant has or will subscribe to; provided however that such deposit may be satisfied in whole or part either in cash or through a letter of credit satisfactory to NCPA's General Manager.

5.3.2 Subsequent Deposits. Periodically, and at least quarterly, NCPA shall review and revise its estimate of all costs for which Participant shall be obligated to pay for under this Agreement for the succeeding 12 months. Following such review, NCPA shall determine whether each Participant has a sufficient balance in the Security Account. To the extent that any Participant's balance in the Security Account is greater than one hundred and ten percent (110%) of the amount required herein, NCPA shall credit such amount as soon as practicable to the Participant's next following invoice. To the extent that any Participant's balance in the Security Account is less than ninety percent (90%) of the amount required herein, NCPA shall add such amount as soon as practicable to such Participant's next invoice. Credits or additions shall not be made to Participants who satisfy these Security Account requirements in whole through the use of a letter of credit, provided that the amount of the letter

of credit shall be adjusted in a like manner to assure an amount equal to the highest three (3) months of estimated Commodity Costs.

5.3.3 Use of Security Account Funds. NCPA may use any and all funds deposited into the Security Account to pay any costs it incurs hereunder, including making payments to counterparties under any Power Purchase Agreement or for termination payments, requests for assurances by Third Parties, credit support, and related expenses under a Power Purchase Agreement, without regard to any individual Participant's balance in the Security Account or proportionate share of MPP Costs and irrespective of whether NCPA has issued an invoice for such costs to the Participants or whether a Participant has made timely payments of invoices. Should Participant have satisfied its Security Account requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy Participant's obligations hereunder.

5.3.4 Emergency Additions. In the event that the funds are withdrawn pursuant to section 5.3.3, or if the Security Account is insufficient to allow payment of an invoice, demand, request for further assurances by Third Parties, or Claims, NCPA shall notify all Participants and then prepare and send a special or emergency assessment to the Participants. Each Participant shall pay

to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment or consent to and direct NCPA to draw on any existing Letter of Credit Participant has established for such purposes.

5.3.5 Accounting and Interest. NCPA shall maintain a detailed accounting of each Participant's deposits into and shares of withdrawals from the Security Account. Interest earned on the Security Account shall be proportionately credited to the Participants in accordance with their Security Account Balances. Any losses in the Security Account caused by early termination of investments shall be allocated among the Participants in accordance with their proportionate Subscription Percentages.

5.3.6 Return of Funds. On the termination of this Agreement with respect to a Participant or a permitted withdrawal of a Participant in accordance with this Agreement, the affected Participant or Participants may apply to NCPA for the return of their share of Security Account funds ninety (90) days after the effective date of such termination or withdrawal. NCPA shall, in its sole discretion, as determined by the General Manager, estimate the then outstanding liabilities of the Participant(s), including any estimated contingent liabilities and shall retain all such funds until all such

liabilities have been fully paid or otherwise satisfied in full. The balance of the Participant's share of the Security Account will be refunded to the Participant.

5.4 Invoicing.

5.4.1 Invoices. As part of NCPA's regular, monthly, advance billing or by separate special invoice, as required in the circumstances, NCPA will issue an invoice to each Participant for its proportionate share of the Commodity Costs, MPP Costs and Transactions Specific Costs due (or any adjustments thereto) based on Sections 5.1 and 5.2 above. Such invoices may include estimated costs and estimated settlement and meter data. Each invoice shall include: (i) the total Transaction Specific and Commodity Costs attributable to Procurement activities under this Agreement for such month and the relevant Participant's share thereof; (ii) the total MPP Costs attributable to program services for such month and the relevant Participant's share thereof; (iii) the quantity of electricity, Resource Adequacy Capacity and Environmental Attributes, by Eligible Contract Purchase, delivered to such Participant (or an estimate thereof) and the unit price for such electricity; (iv) appropriate settlement and meter data (or an estimate thereof); (v) any adjustments to prior invoices required based on actual data received that was estimated in a previous invoice; (vi) notice of the amount, if any, that NCPA has paid or expects to pay

using funds available in the Security Account; and (vii) amounts due from (or credited to) such Participant under Section 5.3.2.

5.4.2 Payment of Invoices. All invoices delivered by NCPA hereunder are due and payable on the date indicated on such invoice, but in any event no later than thirty (30) days following receipt thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day. NCPA may apply a Participant's share of the Security Account to the payment of all or any portion of an invoice issued to such Participant, provided that application of such funds from the Security Account shall not relieve the Participant from any late payment charges pursuant to Section 5.4.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by the relevant Participant, NCPA shall deposit the relevant portion of the payment into the Security Account and credit such deposit to such Participant.

5.4.3 Late Payments. Any amount due and not paid by a Participant in accordance with Section 5.4.2 shall bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference

rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

5.5 Settlement Data and Examination of Books and Records.

5.5.1 Settlement Data. NCPA will make metering and settlement data available to the Participants. Procedures and formats for the provision of such data will be as established by the Participants and NCPA from time to time.

5.5.2 Examination of Books and Records. Any Participant to this Agreement shall have the right to examine the books **and** records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

5.5.3 Revenue Covenant. Any failure of a Participant to meet its obligations hereunder or to cure such failure in a timely manner shall constitute an Event of Default and the Defaulting Party shall be subject to such remedies of NCPA as provided for herein. Each Participant covenants and agrees (i) to continue to pay or advance to NCPA, from its electric department revenues only or, in the case of BART, its tariffs, fees or other sources of revenue provided that such sources shall not include any sums derived from sources the

use of which is limited by law to expenditures other than operating expenses, its percentage share of the costs authorized by Participants in accordance with this Agreement in connection with its participation in the Project. Each Participant further agrees that it will **fix** the rates and charges for services provided by its electric department, or in the case of BART, its general revenues, so that it will at all times have sufficient money in its department revenue funds to meet this obligation; (ii) to make payments under this Agreement from the Revenues of, and as an operating expense of, its Electric System, or in the case of BART, of its general revenues; (iii) to make payments under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement; such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists provided such interruption, interference or reduction in services is caused by forces constituting an Act of God and not reasonably contemplated by the Parties; and (iv) to operate its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and to maintain its Electric System in good repair, working order, and condition.

Section 6. Administration of Agreement

6.1 General. The NCPA Commission has sole overall responsibility and authority for the administration of this Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with NCPA's Constitutive Documents and Section 6.2.

6.2 Action by Participating Members.

(a) Forum: Whenever any action anticipated by this Agreement is required to be taken by the Participating Members, such actions shall be taken at a regular or special meeting of the NCPA Commission but shall be participated in only by those Commissioners, or their designated alternates, who are Participants.

(b) Quorum: A quorum at NCPA Commission meetings for purposes of acting upon matters relating to this Agreement shall consist of Commissioners, or their designated alternates representing majority interest in a Eligible Contract Purchase based upon Subscription Percentages.

(c) Voting: Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement, with a majority vote of the Participating Members required for action subject to the following exceptions:

1. Upon request of any Participant representative, the voting on an issue related to a specific Eligible Contract Purchase shall be by SubscriptionPercentage with a 65% or more favorable vote necessary to carry the action.

ii. After any decision related to this Agreement, other than for a specific Eligible Contract Purchase, is taken by the affirmative vote of less than 65% of the Program Participants, the action can be reviewed and revised if a Participant gives notice of intention to seek such review and revision to NCPA and each of the other Participants within ten (10) days following the date on which such action was taken. Upon receipt of such a request for reconsideration, the Chairman of the Commission shall agendize the matter for reconsideration at the next regular meeting of the Commission or at a special meeting if the circumstances so warrant. The action shall be upheld upon the affirmative vote of authorized representatives the Participants. Any action taken upon reconsideration shall be final.

Section 7. Subscription Percentages; Admission and Withdrawal of Participants

7.1 Subscription Percentages. The Subscription Percentages of each Participant shall be maintained in NCPA's deal capture system and summary reports therefrom will be provided to Participants upon request.

7.2 Admission of New Participants. Following the Effective Date of this Agreement, a Member may execute this Agreement and become a Participant provided that the new Participant: 1) reimburses existing Participants for a proportionate share of the applicable costs identified during NCPA's Annual Budget process and any MPP Costs incurred to establish and administer this MPP Program as determined by existing Participants, and 2) satisfies all Security Account requirements under this Agreement. A new Participant shall not be entitled to any electric Resource Adequacy Capacity, or Environmental Attributes, or energy from Eligible Contract Purchases consummated prior to the date it becomes a Participant unless one or more of the existing Participants ("Allocating Participants") elect to allocate a portion of its Participant Percentage to such Member. Upon an agreement thereof and affirmative vote thereon by all Participants, NCPA shall prepare and distribute to each Participant the written agreement between the Member and the Allocating

Participant(s) indicating the agreed upon change in the Subscription Percentage(s) for the designated Eligible Contract Purchase(s), a counterpart of this Agreement executed by the Member, and a report from NCPA's deal capture system reflecting the revised Subscription Percentages. Any reduction in any Allocating Participant's share of the Security Account shall be credited to the Allocating Participants in accordance with Section 5.3.2.

7.3 Withdrawal of Participants.

7.3.1 Requirements and Process. A Participant may voluntarily withdraw from this Agreement ("**Withdrawing Participant**") by providing two (2) year's advance written notice to NCPA and the other Participants. Upon the mutual agreement of two or more Participants, the Withdrawing Participant may assign some or all of its Subscription Percentage share of its Eligible Contract Purchases to another Participant "**Adjusting Participant**") to assume the Withdrawing Participant's Subscription Percentage only if such withdrawal and assignment does not violate of any applicable credit support conditions. The Withdrawing Participant shall provide to NCPA the applicable assignment agreement between the Withdrawing Participant and the Adjusting Participant(s) regarding any such assignments and NCPA shall reflect

the change in its deal capture system recording the new allocation of Subscription Percentages.

7.3.2 Associated Costs. A Withdrawing Participant shall reimburse NCPA for any and all costs resulting from withdrawal, including but not limited to the legal, accounting, and administrative costs of winding up and assuring the complete satisfaction and discharge of the Withdrawing Participant's obligations.

7.3.3 No Effect on Prior Liabilities. Withdrawal by any Participant will not terminate any ongoing or un-discharged contingent liabilities or obligations resulting from this Agreement until they are assigned to an Adjusting Participant, or are otherwise satisfied in full, or such Withdrawing Participant has provided a mechanism reasonably acceptable to NCPA and the remaining Participants, for the satisfaction in full thereof.

Section 8. Term and Termination The term ("Term") of this Agreement shall commence on the Effective Date, continue for five (5) years, and shall be extended for one (1) year on each anniversary of this Agreement as to each Participant that has not withdrawn in accordance with Section 7.3 or otherwise voluntarily or involuntarily had their participation in this Agreement terminated.

Section 9. Default and Remedies

9.1 Events of Default. An Event of Default under this Agreement shall exist with respect to a Party ("Defaulting Party") upon the occurrence of any one or more of the following:

(i) if any Party fails to make any payment or to provide assurances as required of NCPA under a PPA when due hereunder two (2) Business Days after receipt of notice given by NCPA of such non-payment; or

(ii) the failure of the Defaulting Party to perform any other covenant or obligation under this Agreement where such failure is not cured within ten (10) calendar days following receipt of a notice from NCPA demanding cure (provided that this shall not apply to any failure to make payments (which is covered by Section 9.1 (i))); or

(iii) if any representation or warranty of the Defaulting Party material to the transactions contemplated hereby shall prove to have been incorrect in any material respect when made and the Defaulting Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within ten (10) calendar days of the date of receipt of notice from any other Party demanding cure; or

(iv) if a Participant is in default or in breach of any ~~of~~ its covenants under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement; or

(v) the failure ~~of~~ NCPA to perform any covenant or obligation under this Agreement following a ten (10) calendar day notice to cure by any non-defaulting Member.

9.2 Cure ~~of~~ an Event of Default. An Event ~~of~~ Default shall be deemed cured only if such default shall be remedied within the time period specified in Section 9.1, above, as may be applicable after written notice has been sent to the Defaulting Party from NCPA specifying the default and demanding that the same be remedied provided that failure of a Party to provide such notice shall not be deemed a waiver of such default.

9.3 Participation Rights Of Defaulting Party. Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default and until such Event ~~of~~ Default is cured, the Participant that is the Defaulting Party shall not have the right to participate under Section 6.2 on any matters with respect to this Agreement.

9.4 Remedies in the Event of Default.

9.4.1 Remedies of NCPA. Upon the occurrence **of** an Event of Default where a Participant is the Defaulting Party, without limiting its other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Participant, NCPA may:

(i) suspend the provision of services under this Agreement to such Defaulting Party, including the delivery of electricity **and** other attributes of any Eligible Contract Purchases until the Event **of** Default is cured; and

(ii) demand that the Defaulting Party provide further assurances to compel the correction **of** the default, including mandating the collection of a surcharge to produce Revenues to secure the cure of the Event **of** Default; and

(iii) terminate this Agreement as to the Defaulting Party on ten (10) calendar days prior written notice to the Defaulting Party and following approval **of** the non-defaulting Participants.

9.4.2 Sale/Transfer of Participants Account Upon Default.

Upon any default of a Participant caused by the failure of such Participant to pay

any sums due, and provided that such default is not cured in a timely manner then NCPA shall use its best efforts to sell and transfer for the defaulting Participant's account all or a portion ~~of~~ the Participant's capacity and/or energy and/or Environmental Attributes for the remainder ~~of~~ the term of this Agreement. Notwithstanding that all or any portion of the Participant's capacity is ~~so~~ sold or transferred, the Participant shall remain liable for all of its obligations hereunder unless released therefrom by NCPA upon assumption by a transferee or assignee.

9.4.3 Remedies ~~of~~ Participants. Upon the occurrence of an Event of Default, and following the applicable cure periods, where NCPA is the Defaulting Party, the Participant may, without limiting their other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action the Participants may have against NCPA, terminate this Agreement in whole, subject to the provisions ~~of~~ Section 9.5.4.

9.4.4 Special Covenants Regarding Security Account. In the event that a Participant's balance ~~of~~ the Security Account is insufficient to cover all invoices for costs incurred under this Agreement sent to such Participant, then, without limiting NCPA's other rights or remedies available

under this Agreement, at law or inequity, such Participant shall cooperate in good faith with NCPA and shall cure the default as rapidly as possible, on an emergency basis, taking all such action ~~as~~ is necessary, including, but not limited to, raising rates and charges to its customers to increase its Revenues to replenish its share of the Security Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action ~~as~~ will cure the default with all due haste.

9.5 Effect of Termination or Suspension.

9.5.1 Generally. The suspension or termination of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged contingent liabilities or obligations arising from this Agreement until such obligations are satisfied in full, and all ~~of~~ the costs incurred by NCPA in connection with such suspension or termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other costs and expenses that NCPA is entitled to recover under this Agreement, and other reasonable and necessary costs associated with any and all ~~of~~ the remedies, are paid in full.

9.5.2 Suspension by NCPA. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with Section 9.4.1(i), such Participant shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such suspension and any portion of the MPP Costs that were not recovered from such Participant as a result of such suspension.

9.5.3 Termination by NCPA. If this Agreement is terminated by NCPA with respect to a Participant in accordance with Section 9.4.1 (iii), (i) such Participant shall pay any and all costs incurred by NCPA as a result of such termination including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination and any portion of the MPP Costs that were not, or will not be, recovered from such Participant as a result of such termination; provided, however, if NCPA terminates this Agreement with respect to the last Participant, then this Agreement shall terminate.

9.5.4 Termination by Participants. If this Agreement is terminated by all Participants in accordance with Section **9.4.3**, or by unanimous consent of all ~~of~~ the Parties hereto, then the Participants shall pay to NCPA all previously unpaid MPP Costs incurred as ~~of~~ the date of such termination, and following such termination, the Participants shall cooperate and act in good faith to negotiate and agree upon the method ~~of~~ allocating among the Participants in proportion to their respective Subscription Percentages the costs and benefits ~~of~~ the Eligible Contract Purchases, all PPAs then in effect, and any financing agreements or commitments and any matters pertaining to the administration, management, control, operation and maintenance of the Eligible Contract Purchases. NCPA shall reasonably cooperate with the Participants in connection with implementing the foregoing and the Participants shall indemnify NCPA for any costs incurred in connection therewith, including reasonable attorney fees, fees and expenses ~~of~~ other experts, including auditors and accountants and other reasonable and necessary costs. If the parties are unable to reach agreement as to the foregoing, then the parties agree to submit the matter to mediation with a mutually agreed upon mediator. If the parties are still unable to reach agreement following mediation, then the matter shall be submitted to binding arbitration subject to the rules ~~of~~ the American Arbitration Association, the costs ~~of~~ such arbitration being borne proportionally among the Participants.

Section 10. Miscellaneous

10.1 Confidentiality. The Participants and NCPA will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. It shall be the responsibility ~~of~~ the holder ~~of~~ the claim ~~of~~ confidentiality or trade secret to defend at its expense against any request that such information be disclosed. Confidential or trade secret information shall be marked or expressly identified as such.

10.2 Indemnification and Hold Harmless. Subject to the provisions ~~of~~ Section 10.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability ~~of~~ any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts (“**Claims**”), to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct ~~of~~ a Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

10.3 Several Liabilities. No Participant shall be liable under this Agreement for the obligations of any other Participant, and each Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein, and the obligation of each Participant under this Agreement is a several obligation and not a joint obligation with those of the other Participants.

10.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR

DAMAGES, INCLUDING LOSS OF USE, **LOSS** OF GOODWILL, LOST REVENUES, **LOSS** OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH *HEREBY* WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

10.5 Amendments. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

10.6 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or

condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

10.7 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws **of** the State of California.

10.8 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose **of** convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

10.9 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any party shall be in writing, and shall either **be** personally delivered to a Participant's Designated Representative and the Secretary of the Commission or transmitted to the Participant and the Secretary **of** the Commission at the address shown on the signature pages hereof. The designation of such address may be changed at any time by written notice given to the Secretary **of** the Commission who shall thereupon give written notice of such change to each Participant.

10.10 Warranty of Authority. Each Participant, and NCPA, represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms as to the Participant and as to NCPA. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant evidencing approval of and authority to enter into this Agreement and an opinion of legal counsel that such authority was duly exercised in accordance with such Participant's Constitutive Documents.

10.11 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

10.12 Assignment. Except as provided by Section 7 no Participant may assign or otherwise transfer their interest in their Participant's Percentage or

any other rights and obligations under this Agreement without the express written consent of NCPA.

10.13 List of Exhibits. The Exhibits referenced herein shall be denoted as follows:

Exhibit A - Participant Purchase Confirmation

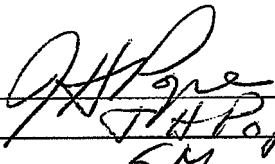
Exhibit B – Attachment I- Form of Request for Proposals

Exhibit B – Attachment II – Preferred Terms to EEI Form of Power Purchase Agreement

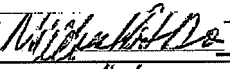
IN WITNESS WHEREOF, each Participant has executed this Agreement with the approval of its governing body, and NCPA has authorized this Agreement in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA
POWER AGENCY

[Address] 180 C. RBY WAY
[City, State, Zip] ROSEVILLE CA. 95678
[Telephone] 916-781-3636
[Facsimile] 916-783-7693

By: 
Title: GM
Date: 9/4/07

Approved as to form:

By: 
Its: Attorney
Date: 9/5/07

CITY OF ALAMEDA

[Address]
[City, State, Zip]
[Telephone]
[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: Attorney
Date: _____

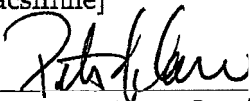
CITY OF BIGGS

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

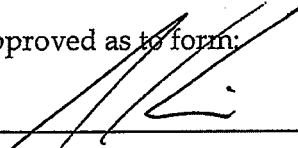


By: Peter R. Carr

Title: City Administrator

Date: Sept 10, 2007

Approved as to form:



By: _____

Its: Attorney

Date: 9-17-07

CITY OF GRIDLEY

[Address]

[City, State, Zip]

[Telephone]

Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: Attorney

Date: _____

CITY OF HEALDSBURG

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: Attorney

Date: _____

CITY OF LODI

[Address]

[City, State, Zip]

[Telephone]

Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:



Its: Attorney

Date: June 25, 2011

CITY OF BIGGS

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: **Attorney**
Date: _____

CITY OF HEALDSBURG

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: **Attorney**
Date: _____

CITY OF GRIDLEY

[Address]

[City, State, Zip]

[Telephone]

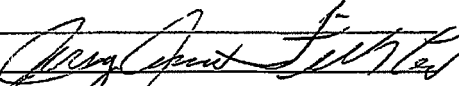
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685 Kentucky St

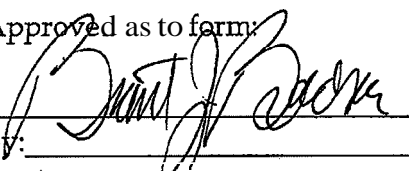
Gridley, CA 95948

(530) 846-5695

(530) 846-3829

By: 
Title: Mayor
Date: 9/7/2007

Approved as to form:

By: 
Its: **Attorney**
Date: _____

CITY OF LODI

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: **Attorney**
Date: _____

CITY OF BIGGS

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: Attorney

Date: _____

CITY OF HEALDSBURG

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: Chef T. W. Stoppel

Title: City Manager

Date: 9/18/07

Approved as to form:

Michael Goana

By: Michael Goana

Its: Attorney

Date: 9-20-07

CITY OF GRIDLEY

[Address]

[City, State, Zip]

[Telephone]

Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: Attorney

Date: _____

CITY OF LODI

[Address]

[City, State, Zip]

[Telephone]

Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: Attorney

Date: _____

CITY OF LOMPOC

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: GARY KEEFE

Title: CITY ADMINISTRATOR

Date: 20 SEP 07

Approved as to form:

SARAH D. STUART

By: SARAH D. STUART

Its: Attorney

Date: 9-12-07

CITY OF PALO ALTO

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: Attorney

Date: _____

PLUMAS-SIERRA RURAL
ELECTRIC COOPERATIVE

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: Attorney

Date: _____

BART

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: Attorney

Date: _____

TRUCKEE DONNER PUBLIC
UTILITY DISTRICT

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

CITY OF UKIAH

[Address]

[City, State, Zip]

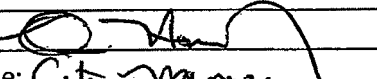
[Telephone]

[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: Attorney
Date: _____

By: 
Title: City Manager
Date: 9-20-07

Approved as to form:

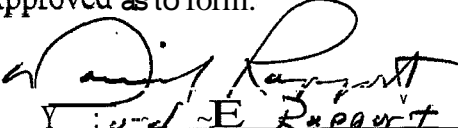
B 
Its: Attorney
Date: 4-24-07

Exhibit A-1
Participant Purchase Confirmation

PARTICIPANT PURCHASE CONFIRMATION

The undersigned Participant hereby subscribesto the followingEligible Contract Purchase and agrees to purchase electriccapacity and energy from NCPA pursuant to the Power Purchase Agreement (PPA)designated below, supplemented and modified **as** follows:

- (a) Seller:
- (b) Purchaser: Northern California Power Agency (NCPA)
- (c) Period of Delivery: From _____
- (d) Schedule (Days and Hours): _____
- (e) Maximum Delivery Rate: _____
- (f) Delivery Point(s): _____
- (g) Type of Product: _____
- (h) Contract Quantity Maximum Energy: _____ MWhrs.
- (i) Contract Price: **See** Attachment A- 1
- (j) Transmission Path for the Transaction: _____
- (k) Form of Power Purchase Agreement: _____
- (l) Special Terms and Exceptions: **See** Attachment A-1
- (m) Security Account Amount Required _____
Transfer from GOR _____
Pay by Other (specify) _____

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Purchase Confirmation and the Parties hereby warrant that they are authorized to do so.

Member

NCPA

Utility Director

General Manager

Date

Date

Approved **as** to Legal Form
Its Counsel

Approved **as** to Legal Form
Its Counsel

Date

Date

Exhibit A-1
Participant Purchase Confirmation

EXHIBIT A-1
ADDITIONAL TRANSACTION-SPECIFIC TERMS

(Attach Seller's completed Attachment I to the RFP and applicable PPA)



REQUEST for PROPOSALS

For

POWER SUPPLY

INTRODUCTION

The Northern California Power Agency (NCPA) is seeking proposals from power suppliers (Seller) for ~~firm~~ capacity and energy.

The bid due date and time is _____ 8:00 am PPT. Bids are to be made on the attached Excel spreadsheet denoted as ATTACHMENT I.

1. BACKGROUND

NCPA is a nonprofit California joint powers agency established in 1968. Its Members are: the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Ukiah, the Port of Oakland, the San Francisco Bay Area Rapid Transit District, the Truckee Donner Public Utility District, and the Turlock Irrigation District; and Associate Members: Placer County Water Agency, and the Plumas-Sierra Rural Electric Cooperative. These entities and electric utilities serve nearly 700,000 electric consumers in Central and Northern California.

Exhibit B - Attachment I
Form of Request for Proposals

As a CAISO Schedule Coordinator, NCPA is able to arrange for physical power deliveries to its Members through the ISO Grid. In addition, NCPAs members hold additional transmission-related rights through other pre-existing contracts.

In Fiscal Year **2004-05**, NCPA operating utilities met a combined peak demand of **1,824** megawatts (MW) and supplied **9,400** gigawatt-hours (GWh) of energy. To meet these loads, NCPA operating utilities own and operate **238** MW of geothermal generation located in the Geysers region of California, **436** MW of hydroelectric facilities, **994** MW of gas-fired generators located in seven Members' service areas, **134** MW of miscellaneous small projects, numerous existing power supply contracts and **596** MW of firm Western Area Power Administration (Western) contracts for capacity and associated energy.

Each of NCPAs Members has the exclusive authority to set retail rates sufficient to cover power purchase obligations. Power purchase contracts between NCPA and third parties are not subject to prudence review by state regulatory agencies and may be enforced in accordance with their terms, which are recognized in California Courts. The California Public Utilities Commission is without any jurisdiction over the power purchase contracts of such NCPA Members. Contracts to be executed as a result of this RFP are intended as binding legal agreements enforceable in the California courts.

Each NCPA Member¹, participating in this RFP, operates its own electric system as an enterprise and special fund. Each NCPA Member² is obligated to establish and collect fees and charges for electricity furnished through its electric system sufficient to pay any and all amounts payable from electric system revenues, which include amounts of capacity or energy, or both, furnished pursuant to an Agreement entered as a result of this RFP. In addition, per agreement with

¹ BART is a local government agency providing public transit services in the San Francisco bay area. BART currently purchases federal preference power that is delivered to BART under special terms and conditions established by the legislature and codified in Public Utilities Code (P.U.C.) section 701.8. This legislation has been amended, in 1998 and most recently in 2004 through enactment of SB 1201. SB 1201 requires electric utilities, including in particular PG&E, to deliver electricity purchased by BART from local publicly owned utilities, such as NCPA, on the same terms and conditions as BART has historically purchased and had delivered federal preference power.

² With respect BART, all income, rents, rates, fees, charges, grants, fares or tariffs, subventions and other moneys derived by BART from its operation including, without limiting the generality of the foregoing, (i) the earnings on and income derived from the investment of such income, rents, rates, fees, charges grants, fares or tariffs, subventions or other moneys and (ii) the proceeds derived by BART directly or indirectly from the sale, lease or other disposition of all or a part of its assets, but the term Revenues shall not include any moneys derived from sources the use of which is limited by law to expenditures other than operating expenses.

Exhibit B - Attachment I
Form of Request for Proposals

NCPA, each Member, participating in this RFP, has funds on deposit in its Security Account equal to the highest (3) months of the immediately following (12) months for its share of the requested purchase amounts in this RFP. Fees and charges for electricity furnished through each NCPA Member's electric system are not taxes and are thus not subject to California tax and voter limitation provisions such as Propositions 13, 62, and 218.

2. THE ELECTRIC SYSTEMS

NCPA will be the purchaser and is making the purchase to meet the needs of its Member Utilities.

As of January 1, 2005, NCPA Member Utilities were allocated a share of the output of the Central Valley Project by the Western Area Power Administration. Member Utilities have varying ownership shares in the NCPA Projects, and purchase the balance of their energy needs through bilateral contracts and/or from other NCPA Members.

NCPA will deliver the power to the Utilities over the PG&E transmission system, which is operated by the California Independent System Operator (CAISO). NCPA operates as a Metered Sub-system under the CAISO Tariff and NCPA as Metered Sub-system Aggregator Agreement (MSSA) with CAISO. NCPA is the Scheduling Coordinator for the MSSA.

3. PROPOSAL PROCESS

Final firm prices ("Bids") are to be submitted by e-mail to the persons identified below, using ATTACHMENT I, no later than 8:00 am PPT on _____, 20____. The prices are to be guaranteed for 2 hours while the NCPA evaluates. The successful Seller will be notified by 10:00 am PPT. The selection of the successful bidder will be based upon a myriad of criteria including price, qualifications and contractual terms.

Thomas S.W. Lee, P.E.
180 Cirby Way
Roseville, CA 95678
Fax: (916) 783-7693

4. PRODUCT DESCRIPTION:

This request is for a California Independent System Operator (CAISO) Firm Transaction. The CAISO Firm Transaction is a product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the CAISO Tariff) that is or will be scheduled as a Schedule Coordinator to Schedule Coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO, as amended from time to time, for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" (as defined in the CAISO Tariff) called by the CAISO in accordance with the terms of its Tariff.

- a. Product: NCPA is requesting proposals for the following products:

Product 1A - HLH (Heavy Load Hour) is defined as energy delivered from hours ending ~~(HE)~~ 0700-2200 Monday-Saturday, excluding NERC holidays, PPT,

Product 1B - LLH (Light Load Hour) is defined as energy delivered from hours ending (HE) 0100-0600 and 2300-2400 Monday-Saturday, all day Sunday and NERC holidays, PPT,

- b. Quantity: Monthly quantities for each product are summarized in ATTACHMENT I. The CAISO Firm Transaction table indicates the total need for each month. *NCPA will also consider meeting a portion of its total need with monthly Cull Options for Product 1A and Product 1B.*
- c. Point of Delivery: The point of delivery is NP15. In the event the present NP15 zone is modified, the new delivery point shall be the zone most closely resembling the current NP15 zone as agreed by the Supplier and NCPA.

NCPA will consider alternative delivery points suggested by the successful Seller if economic benefits to its Members can be demonstrated.

Exhibit B - Attachment I
Form of Request for Proposals

- d. **Scheduling:** Scheduling will be performed by NCPA, or its successor. Power deliveries shall be scheduled with the CAISO, or its successor, as a Schedule Coordinator to Schedule Coordinator transaction. Scheduling timelines shall be consistent with the CAISO tariffs, protocols, operating procedures and scheduling practices. All daily firm energy deliveries will be pre-scheduled no later than 10:00 am PPT of the day prior to the delivery date or, if necessary in the sole judgment of NCPA, at such time as required to meet CAISO requirements.
- e. **Start Date:** _____, 20__ at 0000 hours
- f. **End Date:** _____, 20__ at 2400 hours
- g. **Price Provision:** Fixed prices for the products specified in Section 4.a above. Use the spreadsheet form provided in ATTACHMENT I to submit prices.

5. GENERAL CONTRACT TERMS AND ELIGIBLE PROPOSALS

The NCPA **strongly prefers** to use the attached form of EEI Master Power Purchase and Sale Agreement (See Attachment II hereto), but may in its sole discretion consider proposals under the currently effective WSPP Agreement for transactions with duration of quarter or less. *Due to recent changes in the WSPP Agreement, as approved by the Federal Energy **Regulatory** Commission, proposals referencing prior Master Confirmations Agreements under the WSPP Agreement between Proposer and NCPA will not be considered as Eligible Proposals for the purposes of this XFP.*

6. ADDITIONAL INFORMATION

NCPA's June **30, 2003** audited financial statements can be found at http://www.ncpa.com/admin_accounting_finance.html

External ratings for NCPA Project Bonds may be found at the following locations:

- Moody's Investor Service: <http://www.moodyv.com/cust/default.asp>

Exhibit B - Attachment I
Form of Request for Proposals

- Fitch Ratings: <http://www.fitchibca.com/corporate/index.cfm>

For a copy of Fitch Ratings August 18, 2004 rating action or any other credit related information, please email Doug Odom at doug.odom@ncpa.com.

Any questions regarding this RFP should be submitted to Tom Lee (916) 781-4220.

NCPA is not bound to purchase any energy from any proposal submitted pursuant to this RFP. No binding commitment shall arise on the part of NCPA or Seller until and unless the parties sign a definitive agreement. NCPA shall have the right, upon its sole and absolute discretion, to reject any quote or proposal with or without cause.

Attachment I

**Requested Monthly Quantities
and
Supplier's Price Quote Form**

Please use the attached Excel spreadsheet to complete your bid.
Email the completed bid form to: Thomas ~~Lee~~ at: tom.lee@ncpcpa.com.

RFP Issue Date: _____

Response Deadline: _____, 5:00pm Pacific Prevailing Time (PPT)

Exhibit B - Attachment II
Preferred Terms to EEI Form of Power Purchase Agreement

MASTER POWER PURCHASE AND SALE AGREEMENT
(EEI Version 2.1, modified 4/25/00)

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: / / 2007 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules, annexes and any written supplements hereto, the Party A Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "*Agreement*." The Parties to this *Master Agreement* are the following:

Name: ("___" or "Party A ")	Name: Northern California Power Agency ("Counterparty" or "Party B")
All Notices: Attn: Address Phone: Facsimile: Duns Federal Tax ID Number:	All Notices: Attn: General Manager Northern California Power Agency 180 Kirby Way Roseville, CA 95678 Phone: 916-781-781-3636 Facsimile: 916-781-4254 Duns: 08-290-0564 Federal Tax ID Number: 94-2550072
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile:	With additional Notices of an Event of Default or Potential Event of Default to: Attn: Contract Administration Northern California Power Agency Phone: 916-781-4296 Facsimile: 916-781-4252
Confirmations: Attn: Power Confirmation Department Phone: Facsimile:	Confirmations: Attn: Power Confirmations Phone: 916-781-4205/4224 Facsimile: 916-781-4255
Invoices: Attn: Phone: Facsimile:	Invoices: Attn: Accounts Payable Northern California Power Agency 180 Kirby Way Roseville, CA 95678 Phone: 916-781-4211/4230/4232 Facsimile: 916-781-4255

Exhibit B - Attachment 11

Preferred Terms to EEI Form of Power Purchase Agreement

Scheduling: Attn: Phone: Facsimile:	Scheduling: Attn: Chief Dispatcher/Scheduler Northern California Power Agency 180 Cirby Way Roseville, CA 95678 Phone: 916-781-4237/3636 Facsimile: 916-781-4226
Payments: Attn: Phone: Facsimile: E-mail _____	Payments: Attn: Treasurer-Controller Northern California Power Agency 180 Cirby Way Roseville, CA 95678 Phone: 916-781-4210/4230/4232 Facsimile: 916-781-4255
Wire Transfer: BNK ABA: ACCT:	Wire Transfer: Deposit to Northern California Power Agency BNK U.S. Bank ABA. 121122676 ACCT: 1-534-0216-2744 Attn: Cyndy Husebye U.S. Bank 555 SW Oak Street, Suite 400 Portland, OR 97204 Phone: 877-295-2509 Facsimile: 877-324-1680
Credit and Collections: Attn: Phone: Facsimile:	Credit Attn: Credit Northern California Power Agency 180 Cirby Way Roseville, CA 95678 Phone: 916-781-4221/4224 Facsimile: 916-781-4255
	Collections Attn: Accounts Receivable Northern California Power Agency 180 Cirby Way Roseville, CA 95678 Phone: 916-781-4211/4230/4232 Facsimile: 916-781-4255

With additional Notices of an Event of Default or Potential Event of Default to:
 Attn:

Phone:
 Facsimile:

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: General Counsel:
 Northern California Power Agency
 Phone: 916-556-1531
 Facsimile: 916-556-1516

Exhibit B - Attachment II

Preferred Terms to EEI Form of Power Purchase Agreement

The Parties hereby agree that the General Terms and Conditions are incorporated herein, as selected, modified and amended by the following specific provisions, as provided for in such General Terms and Conditions:

Party A Tariff FERC Electric Rate Schedule No. __, dated MM/DD/YY, Docket Number: ER##-###-### Party A shall provide to Party B a copy of its current Tariff and any and all amendments with its bid in response to Party A's request for proposals and in any event no later than thirty (30) Days before the execution of this Agreement.

Party B Tariff: N/A

ARTICLE ONE	GENERAL DEFINITIONS
	<p>Section 1.12, line 4: delete "issues" and replace with "issuer".</p> <p>Section 1.50: delete "24" and replace with "2.5"</p> <p>Section 1.51 delete that part of the first sentence following the words "provided, however," and replace the deletion with: "in no event shall such price include any ratcheted demand charges, but will include penalties under any transmission or interconnection arrangement in a tariff of the transmission provider that is utilized by Buyer, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability, although it may utilize either of those options at its own choice at a cost up to the cost the Buyer would incur if it did not run such assets."</p>
ARTICLE TWO	TRANSACTION TERMS AND CONDITIONS
	<p><input checked="" type="checkbox"/> Optional provision in Section 2.4. If not checked, inapplicable.</p>
ARTICLE FOUR	REMEDIES FOR FAILURE TO DELIVER/RECEIVE
	<p><input type="checkbox"/> Accelerated Payment of Damages. If not checked, inapplicable.</p> <p>Section 4.3 is added to Article Four, as follows:</p> <p>"4.3 <u>Consequence of Failing to Deliver/Receive</u>. Notwithstanding, and in addition to the remedies provided pursuant to, Sections 4.1, 4.2 and 5.7, if Seller or Buyer fails to schedule, deliver or receive all or part of the Product pursuant to a Transaction for a period of three (3) or more consecutive days, and such failure is not excused under the terms of the Product, by Force Majeure, by the other Party's failure to perform or by agreement of the Parties, then upon one (1) Business Day's prior written notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such Transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-performing Party intends to resume its performance; provided that, if the performing Party has entered into a replacement contract with a term of 31 days or less, the performing Party may resume performance at the end of the term of such replacement contract. Remedies available under this provision to the performing Party are in addition to, not in replacement of, other remedies specified in this Agreement."</p>

Exhibit B - Attachment II
Preferred Terms to EEI Form of Power Purchase Agreement

ARTICLE FIVE	EVENTS OF DEFAULT REMEDIES
	<p><u>X</u> Cross Default provision of Section 5.1(g) shall apply for both Party A and Party B. Cross Default amount for Party A shall be \$_____, and for Party B shall be \$_____.</p> <p>Section 5.1(c), line 4 after "the exclusive remedy for which" add ", until the number of failures to deliver/receive reaches the number set forth in Section 5.1(i) or Section 5.1(j),".</p> <p>Section 5.1(g), lines 3 and 10: after "such Party" add "or any Affiliate of such Party"</p> <p>Section 5.1(i), Section 5.1(j), Section 5.1(k) and Section 5.1(l) are added to Section 5.1, as follows:</p> <ul style="list-style-type: none"> (i) during any consecutive 90-day period, five (5) or more "Seller Failures" (as that term is used in Section 4.1) have occurred under any and all Transactions, regarding which the Seller shall be deemed to be the Defaulting Party and Buyer shall also be entitled to its remedies under Section 4.1; (j) during any consecutive 90-day period, five (5) or more "Buyer Failures" (as that term is used in Section 4.2) have occurred under any or all Transactions, regarding which the Buyer shall be deemed to be the Defaulting Party and Seller shall also be entitled to its remedies under Section 4.2; (k) a representation or warranty with respect to the Defaulting Party's financial statements (consolidated or unconsolidated balance sheet, income statement and statement of cash flow) or position that is false or materially misleading. (l) revocation by the Federal Energy Regulatory Commission of Party A's authorization to make sales at market-based rates. <p>Section 5.2, line 3: after "the right" add ", but not the obligation"; line 14, add after the second sentence, the following: "A calculation shall be deemed made in a commercially reasonable manner if the Non-Defaulting Party has secured at least one competitive price quote, in writing, from a third party energy seller, supplier or marketer. No Settlement Amount shall be due or payable to the Defaulting Party for any Terminated Transaction. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero, notwithstanding any provision of this Agreement to the contrary."</p> <p>Section 5.3, line 6 after "Non-Defaulting Party" add "plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight."; line 10, after last sentence, add "No Termination Payment shall be due or payable to the Defaulting Party for any Terminated Transaction."</p>

Exhibit B - Attachment 11
Preferred Terms to EEI Form of Power Purchase Agreement

	<p>Section 5.6 Closeout Setoff</p> <p>— Option A (Applicable if no other selection is made.)</p> <p><u>X</u> Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: Option B is amended as set forth in Article 10 below.</p> <p>In line 2, after "Defaulting Party" add "otherwise". In line 8, add a new sentence: "At the Non-Defaulting Party's election, any and all obligations owing by or to an Affiliate of a Party shall be treated as if such obligations were owed by or to the Party itself for purposes of setoff."</p> <p>— Option C (No Setoff)</p>
ARTICLE SIX	PAYMENT AND NETTING
	<p>Section 6.8, line 3: Delete "may by agreement of the Parties" and replace with "shall".</p>
ARTICLE EIGHT	CREDIT AND COLLATERAL REQUIREMENTS
	<p>8.1 Party A Credit Protection</p> <p>(a) Financial Information of Party B:</p> <p>— Option A</p> <p><u>X</u> Option B Specify: Audited financial statements for Northern California Power Agency</p> <p>— Option C</p> <p>In 8.1(a), (Option A) line 2: delete "120 days" and replace with "180 days".</p> <p>In 8.1(a), (Option B) line 1: delete "120 days" and replace with "180 days"</p> <p>(b) Credit Assurances by Party B:</p> <p><u>X</u> Not Applicable</p> <p>— Applicable</p>

Exhibit B - Attachment 11
Preferred Terms to EEI Form of Power Purchase Agreement

	<p>(c) Collateral Threshold for Party B:</p> <p><input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Applicable</p> <p>Party B Independent Amount: N/A</p> <p>Party B Rounding Amount: N/A</p> <p>Party B Minimum Transfer Amount: N/A</p> <p>(d) Downgrade Event:</p> <p><input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Applicable</p> <p>If applicable, complete the following:</p> <p><input checked="" type="checkbox"/> It shall be a Downgrade Event for Party B only if (i) Party B's underlying rating, determined without reference to third party credit enhancement, on its utility revenue bond ("Debt") by S&P, Moody's, and Fitch is respectively below BBB- or Baa3, and Party B fails to maintain ninety (90) Days of Cash on Hand. For purposes of this Agreement, "Days of Cash on Hand" means, with respect to Party B, the required Security Account under NCPA's MPP Agreement with its members, and (ii) Party B no longer has the legal right to demand that its members adjust electric rates as necessary to fully recover the total costs Party B's is obligated for hereunder</p> <p>Suarantor for Party B, Section 8.1(e): <u>N/A</u></p> <p>Suarantee Amount: <u>N/A</u></p> <p>3.2 <u>Party B Credit Protection</u>:</p> <p>(a) Financial Information of Party A</p> <p><input type="checkbox"/> Option A <input type="checkbox"/> Option B <input checked="" type="checkbox"/> Option C Specify: Party A shall deliver within 120 days following the end of each fiscal year, a copy of the _____ audited consolidated financial statement for such fiscal year, if such financial statement is not available on "EDGAR."</p> <p>(b) Credit Assurances by Party A:</p> <p><input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Applicable</p> <p>Collateral Threshold for Party A:</p> <p><input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Applicable</p>
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Exhibit B - Attachment II
Preferred Terms to EEI Form of Power Purchase Agreement

	<p>If applicable, complete the following:</p> <p>Party A Collateral Threshold: means with respect to Party A, at any time the amount specified in the table below under the relevant heading opposite the lower of the Credit Ratings at that time assigned by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. ("S&P") or Moody's Investors Service, Inc. ("Moody's"); provided, that (a) if Party A is no longer rated by one of S&P or Moody's, the Threshold with respect to Party A will be zero, and (b) if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing, the Threshold with respect to such party shall be zero.</p> <table border="0"> <thead> <tr> <th>S&P Rating</th> <th>Moody's Rating</th> <th>Threshold</th> </tr> </thead> <tbody> <tr> <td>A- or above</td> <td>A3 or above</td> <td>\$ _____</td> </tr> <tr> <td>BBB+</td> <td>Baa1</td> <td>\$ _____</td> </tr> <tr> <td>BBB</td> <td>Baa2</td> <td>\$ _____</td> </tr> <tr> <td>BBB-</td> <td>Baa3</td> <td>\$ _____</td> </tr> <tr> <td>Below BBB- (or rating suspended or withdrawn by both S&P and Moody's)</td> <td>Below Baa3 (or rating suspended or withdrawn by both S&P and Moody's)</td> <td>\$ 0 (zero)</td> </tr> </tbody> </table> <p>Party A Independent Amount: \$0</p> <p>Party A Rounding Amount: \$ _____</p> <p>Party A Minimum Transfer Amount: \$ _____</p> <p>(d) Downgrade Event:</p> <p>____ Not Applicable</p> <p><u>X</u> Applicable</p> <p>If applicable, complete the following:</p> <p><u>X</u> It shall be a Downgrade Event for Party A only if the Credit Rating of Party A falls below BBB- from S&P or Baa3 from Moody's or if Party A ceases to be rated by either S&P or Moody's.</p> <p>(e) Guarantor for Party A: _____</p> <p>Guarantee Amount: _____</p>	S&P Rating	Moody's Rating	Threshold	A- or above	A3 or above	\$ _____	BBB+	Baa1	\$ _____	BBB	Baa2	\$ _____	BBB-	Baa3	\$ _____	Below BBB- (or rating suspended or withdrawn by both S&P and Moody's)	Below Baa3 (or rating suspended or withdrawn by both S&P and Moody's)	\$ 0 (zero)
S&P Rating	Moody's Rating	Threshold																	
A- or above	A3 or above	\$ _____																	
BBB+	Baa1	\$ _____																	
BBB	Baa2	\$ _____																	
BBB-	Baa3	\$ _____																	
Below BBB- (or rating suspended or withdrawn by both S&P and Moody's)	Below Baa3 (or rating suspended or withdrawn by both S&P and Moody's)	\$ 0 (zero)																	

Exhibit B - Attachment II
Preferred Terms to EEI Form of Power Purchase Agreement

ARTICLE TEN	MISCELLANEOUS
	<p>___ Confidentiality Applicable If not checked, inapplicable.</p> <p>Section 10.1, line 2: delete "upon (thirty)30 days' prior written notice" and replace with "which termination shall be effective immediately upon receipt of written notice thereof".</p> <p>Section 10.2 (ix) is deleted in its entirety</p> <p>Section 10.4, line 1: after "Each Party" add "to the extent permitted by applicable law"</p> <p>Section 10.6, line 4: delete "New York" and replace with "California."; Line 5, delete second sentence and replace with "With respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the Parties hereby consent to the exclusive jurisdiction of the federal courts sitting in the Eastern District of the State of California.; provided, however, that if the federal courts sitting in the Eastern District of the State of California refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of Sacramento, State of California."</p>
	<p>Section 10.8, line 4 after "with Section 2.3)" add "Party B's bid solicitation-related documents, including but not limited to information, statements, records, and reports provided by Party A to Party B in connection with such solicitation,"; line 18: delete 6th sentence; line 30: delete last sentence and replace with "The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) months."</p>

Exhibit B - Attachment II
Preferred Terms to EEI Form of Power Purchase Agreement

	<p>Section 10.10 is replaced in its entirety, as follows:</p> <p>“10.10 <u>Forward Contract</u>. The Parties acknowledge and agree that this Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code as amended by the Bankruptcy Code Amendments of 2005; that all Transactions hereunder constitute “forward contracts,” and that each believes that it is a “forward contract merchant” under statutory and decisional law in effect as of the Effective Date.”</p> <p>Section 10.12 is added to Article 10, as follows:</p> <p>“10.12 <u>No Agency</u>. In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.”</p> <p>Section 10.13 is added to Article 10, as follows:</p> <p>10.13 <u>Dispute Resolution</u>. In the event of any controversy or claim, whether based in contract, tort, or otherwise, arising out of or based upon, or relating to this Agreement or the scope, breach, termination or validity of each of them (a “Dispute”), the Parties will resolve such Dispute in the following manner:</p> <p>(a) The Parties will attempt in good faith to resolve the Dispute promptly by negotiations between duly authorized representatives of the Parties who have authority to settle the Dispute. When a Party believes there is a Dispute, that Party will give the other Party written notice describing the Dispute with reasonable particularity. Within thirty (30) Days after receipt of such notice, the receiving Party will submit a written response to the other Party.</p> <p>(b) If the Dispute is not resolved within forty-five (45) Days of the date of the response given pursuant to Section 10.13.1, or such additional time, if any, that the Parties mutually agree to in writing, the Parties shall try in good faith to settle the Dispute by mediation. The form of mediation and the mediator(s) selected to resolve the Dispute shall be acceptable to both Parties.</p>
	<p>(c) If the Dispute is not resolved through mediation within ninety (90) Days after the first meeting of the Parties and mediator(s), or such additional time, if any, that the Parties mutually agree to in writing, either Party shall be free to pursue any and all legal actions and remedies as it may deem necessary.</p>

Exhibit B - AttachmentII
Preferred Terms to EEI Form of Power Purchase Agreement

SCHEDULEM	
	<p> <input checked="" type="checkbox"/> Party A is a Governmental Entity or Public Power System <input checked="" type="checkbox"/> Party B is a Governmental Entity, Schedule M Applicable <input checked="" type="checkbox"/> Add Section 3.6. If not checked, inapplicable. <input type="checkbox"/> Add Section 8.4. If not checked, inapplicable. </p> <p>A., pertaining to the definitions in Article One, is amended, in part, as follows:</p> <p> "Act" is amended in its entirety, as follows: "“Act” means applicable California and local laws, including but not limited to the California Constitution, the California Government Code, the California Public Utilities Code, the Joint Powers Agreement of the Northern California Power Agency under which Party B was created, organized and authorized to enter into this Master Agreement and each Transaction hereunder.” </p> <p> "Special Fund" line 5: Add a second sentence, as follows: "For purposes of this Schedule M, Party A acknowledges that Party Bs Security Account under its Market Purchase Program Agreement (a copy of which has been provided to Party A) meets the definition of "Special Fund." </p> <p>C., pertaining to the representations and warranties to Section 10.2, is amended, as follows:</p> <p>Line 7: after "without limitation" add "and to the extent applicable,".</p> <p>D., pertaining to Section 3.4, is amended, as follows:</p> <p>Line 8: after "Agreement" add "to the extent the same are not required under the NCPA Joint Powers Agreement".</p> <p>D., pertaining to Section 3.5, is amended, to read as follows:</p> <p>3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself from (a) suit, other than with respect to claims required to be timely filed pursuant to California law (Government Code section 810 et seq.); (b) jurisdiction of any court in which suit may legally be brought against it under the law of California; (c) relief which may legally be sought against it by way of injunction, order for specific performance or recovery of property; (d) to the extent legally permissible, attachment of assets, or (e) to the extent legally permissible, execution or enforcement of any judgment.</p>

Exhibit B - Attachment II
Preferred Terms to EEI Form of Power Purchase Agreement

	<p>E., pertaining to the addition of Section 3.6, is amended, as follows:</p> <p>Lines 8 - 12 shall be amended in its entirety, as follows:</p> <p>“any breach of clause (ii) herein shall be deemed to have arisen during a fiscal period of Government Entity or Public Power System for which such budgetary approval or certification of its obligations under this Master Agreement is required to be in effect and an Event of Default shall be deemed to have occurred for purposes of Section 5.1 under which Governmental Entity or Public Power System shall be treated as the Defaulting Party.”</p> <p>G., pertaining to Section 10.6, does not apply.</p>
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Exhibit B - Attachment 11
Preferred Terms to EEI Form of Power Purchase Agreement

SCHEDULE P	PRODUCTS AND RELATED DEFINITIONS
	<p>The following defined terms are added to Schedule P:</p> <p>"CAISO means the California Independent System Operator, or its successor.</p> <p>"CAISO Tariff" means the Federal Energy Regulatory Commission-approved tariff of CAISO, including all CAISO protocols, as the same may be amended from time to time.</p> <p>"CAISO Energy" means a Transaction in which the Seller shall sell and the Buyer shall purchase a quantity of Energy equal to the hourly quantity, without Ancillary Services (as defined in the CAISO Tariff) that is or will be scheduled as a schedule coordinator-to-schedule coordinator transaction pursuant to the CAISO Tariff, for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" (as defined in the CAISO Tariff) called by the CAISO in accordance with the CAISO Tariff.</p> <p>"NP15 Zone Delivery Point" means the NP15 Zone; provided, however, if the California Independent System Operator or its successor ("CAISO") implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub ("NP15 EZ Gen Hub"), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 ("Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation's Market Redesign and Technology Upgrade, Docket No. ER02-1656-025"); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the Parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.</p>

Exhibit B - Attachment II
Preferred Terms to EEI Form of Power Purchase Agreement

EXHIBIT A	MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER
	After "___ Firm (LD)", add, as follows: ___ Firm Power Specify Unit(s) qualifying as Network Resources for the Buyer: _____ _____ _____

Party A : By: _____ Name: _____ Title: _____ Date: _____	Party B: Northern California Power Agency Approval by General Manager: By: _____ Name: James Pope Title: General Manager Date: _____
	Party B: Northern California Power Agency Approved as to Form: _____ Name: Michael Dean Title: General Counsel Date: _____

DISCLAIMER This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

RESOLUTION NO. 2011-122

A RESOLUTION ~~OF~~ THE LODI CITY COUNCIL APPROVING THE
NORTHERN CALIFORNIA POWER AGENCY MARKET PURCHASE
PROGRAM AGREEMENT AND AUTHORIZING EXECUTION BY THE CITY
MANAGER WITH ADMINISTRATION BY THE ELECTRIC UTILITY DIRECTOR
AND APPOINTING THE CITY MANAGER AND ELECTRIC UTILITY
DIRECTOR AS THE DESIGNATED REPRESENTATIVE FOR LODI

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WHEREAS, Lodi, as a municipal electric utility, is a member of the Northern California Power Agency (NCPA) and has the need to purchase electric energy or capacity to meet its future electric power needs; and

WHEREAS, NCPA is willing to undertake the purchase of electric energy and capacity for its members pursuant to its Market Purchase Program Agreement (MPPA) up to a period of five years; and

WHEREAS, utilizing the MPPA, NCPA will enter into power purchase agreements for the benefit of participating members, which agreements shall be in the form of the Western Systems Power Pool Agreement (WSPP Agreement) or the Edison Electric Institute Master Power Purchase and Sale Agreement (EEI Master Agreement), with such modifications as have previously been approved by the NCPA Commission, and which modifications have been reviewed and are concurred in by the City; and

WHEREAS, it is recognized that the market for electric energy or capacity may not support the modifications to the WSPP Agreement or EEI Master Agreement or may only support such modifications with unacceptably high prices, or may require other additional or contradictory modifications; and

WHEREAS, requests for proposal for the purchase of electric energy or capacity must be responded to within a very short time frame; and

WHEREAS, the MPPA provides that, following the issuance of a request for proposals for power or capacity, the execution of a Participant Purchase Confirmation by the Designated Representatives of an NCPA member participating in the MPPA will be deemed the subscription by that NCPA member to the purchase of power or capacity upon the terms negotiated, whether or not such modifications have been made to the WSPP Agreement or EEI Master Agreement; and

WHEREAS, maintenance of an adequate, cost effective supply of electric energy or capacity is a matter of critical importance, directly affecting the public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the NCPA Market Purchase Program Agreement, which is on file in the office of the City Clerk, and is incorporated into this resolution by reference, and hereby authorizes execution by the City Manager with administration by the Electric Utility Director; and

BE IT FURTHER RESOLVED that the City Manager or the Electric Utility Director is authorized to execute such amendments and supplements to the same as the City's Manager or Electric Utility Director determines, with the attestation of the City Attorney, to be necessary or appropriate from time-to-time hereafter to cure any ambiguity or eliminate superfluous provisions or to correct or supplement any defective provision of the same.

BE IT FURTHER RESOLVED that the City Manager and the City's Electric Utility Director are hereby declared the "Designated Representatives" of the City pursuant to the MPPA. Such Designated Representatives are hereby authorized to execute Participant Purchase Confirmations for either or both electric energy and capacity and to accede to or agree to amendments to either the WSPP Agreement or the EEI Master Agreement with the attestation of the City Attorney, provided that such Participant Purchase Confirmations are entered into in conformance with the MPPA. The obligations entered into by such officers on behalf of the City shall be valid and binding, and the City agrees to pay for such obligations in accordance with the MPPA as fully and as if each such Participant Purchase Confirmation and transaction were directly presented to and individually approved by it.

Dated: August 3, 2011

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I hereby certify that Resolution No. 2011-122 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 3, 2011, by the following vote:

AYES: COUNCIL MEMBERS - Hansen, Katzakian, Nakanishi, and
Mayor Johnson

NOES: COUNCIL MEMBERS - None

ABSENT: COUNCIL MEMBERS - Mounce

ABSTAIN: COUNCIL MEMBERS - None


RANDI JOHL
City Clerk